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After Final Reply dated 13 August 2007
Responsive to Final Office Action mailed on 20 July 2007

REMARKS

Request for consideration of this Reply after Final Action

Given that the finality of the previous Action was withdrawn, the present Action is effectively the first Final Action, and this Reply is the first opportunity to respond to the new rejections on new grounds, *i.e.*, this is the first time the present arguments could have been made. Accordingly, it is requested that this Reply be considered.

Claim Rejections – 35 USC § 103 over Pargass in view of Buell

Claims 1, 3-5, 8-15, and 20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over PCT Publication No. WO 99/13813 to Paragon, with Pargass as the inventor ("Pargass" hereinafter) in view of U.S. Patent No. 4,704,115 to Buell ("Buell" hereinafter).

These rejections are traversed on the ground that the requirements of MPEP 2142 for the establishment of a *prima facie* case of obviousness have not been met because the cited references fail to teach or suggest all of the limitations of any of the rejected claims.

Independent Claims 1 and 20 and claims depending from them

Claims 1 and 20 are independent and each of the rejected dependent claims depends from Claim 1, thereby containing all of its limitations. In each of Claims 1 and 20, the claimed disposable diaper comprises an absorbent assembly and a distinctly claimed chassis, which is attached to the exterior surface of the absorbent assembly. The absorbent assembly has laterally opposing longitudinally extending breathable side flaps. Each side flap has longitudinally opposing ends and is attached adjacent to its ends to the interior surface of the absorbent assembly. Laterally opposing portions of the chassis in the crotch region of the disposable diaper are folded laterally inward to overlap the respective side flaps and are attached to the respective side flaps.

Please note that the structure of the claimed disposable diaper includes both the laterally opposing longitudinally extending breathable side flaps and the laterally inwardly folded portions of the chassis in the crotch region. Please note also that the laterally inwardly folded portions of the chassis both overlap the respective side flaps and are attached to the respective side flaps. Thus, the claim requires a layered structure, in which each of the side flaps is attached to the

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interior surface of the absorbent assembly, adjacent to the longitudinally opposing ends of the side flap, and the laterally inwardly folded portions of the chassis in the crotch region, in turn, overlap and are attached to the side flaps.

Such a structure can be seen clearly in Figures 1, 4, and 6 of the present Application, which are reproduced below for the convenience of the reader. Please note the following structural elements in particular:

- side flaps 247;
- attachment zones 251, where the side flaps 247 are attached to the interior surface 202 of the absorbent assembly 200; and
- attachment zones 109, where the laterally inwardly folded portions of the chassis 100 that overlap the side flaps 247 are attached to the side flaps 247.

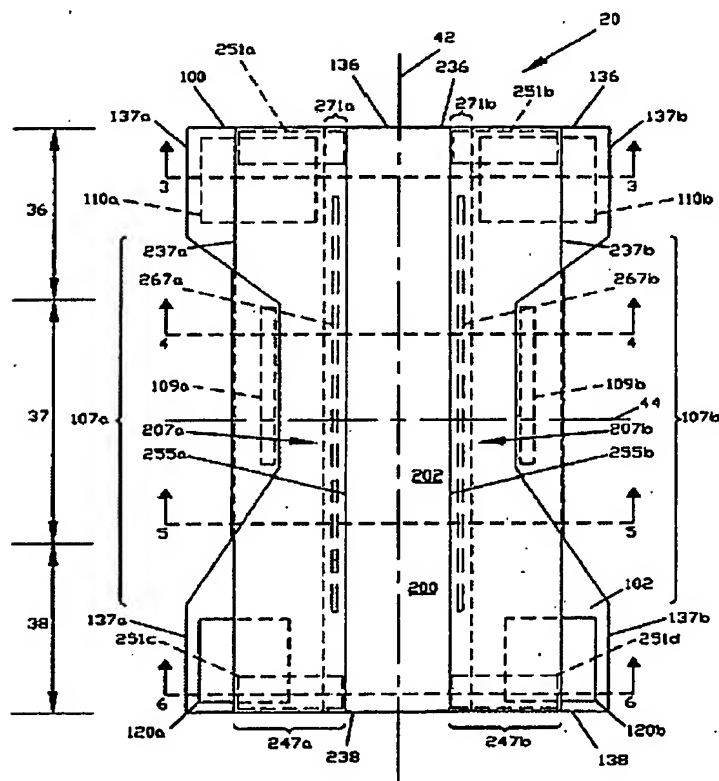


FIG. 1

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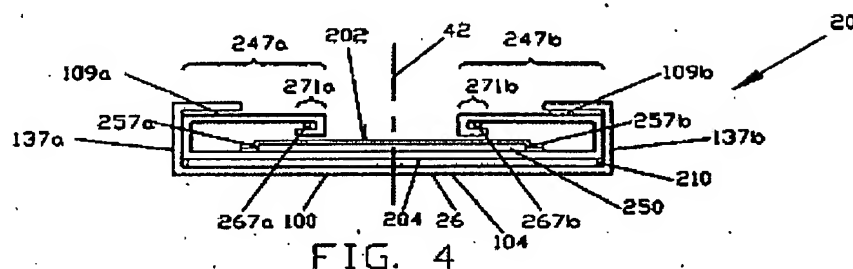


FIG. 4

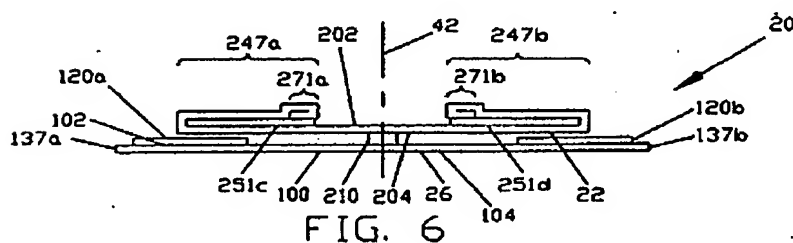


FIG. 6

In contrast to the claimed structure, neither Pargass nor Buell teaches or suggests anything resembling the claimed layered structure. In fact, Buell does not teach or suggest what it was alleged in the Office Action to teach. Moreover, the modification proposed in the Office Action would not create such a layered structure.

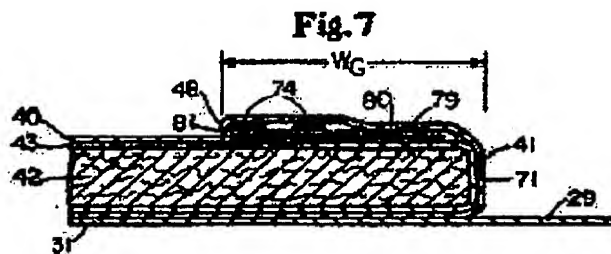
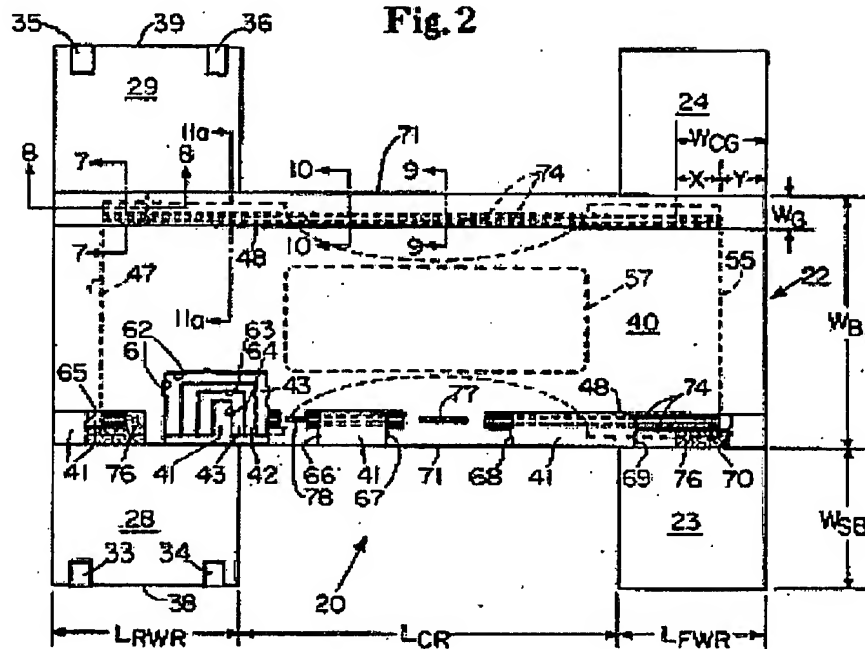
Pargass teaches only *leg gather assemblies* 32, which are joined to the *topsheet* 30 in some embodiments. In the Office Action, these *leg gather assemblies* 32 were alleged to be equivalent to the claimed side flaps and the interior surface of the *topsheet* 30 was alleged to be equivalent to the claimed interior surface of the absorbent assembly. Pargass's *liquid barrier film* 112 was alleged to be another element of an equivalent to the claimed absorbent assembly, leaving only Pargass's *backsheet* 26 as forming an otherwise unidentified alleged equivalent to the claimed chassis. Pargass does not teach or suggest folding any portion or portions of the *backsheet* 26 laterally inward in the crotch region or any other region. Pargass does not teach or suggest lapping any other layer over the *leg gather assemblies* 32, be the other layer the *backsheet* 26 or any other layer, and therefore does not teach or suggest attaching any such overlapping layer to the *leg gather assemblies* 32.

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Contrary to what was stated in the Office Action, Buell does not teach that "portions of the chassis in the crotch region are folded inwardly to overlap upstanding leak preventing gutters 45, 46 (the gutters are considered herein to define side flaps) and are attached thereto in bond areas 76" (Office Action, page 3, lines 20-22). Instead, the portions of Buell's *backsheet 41* in the *crotch region LCR* that are folded inward actually form the *gutters 45 and 46*. In other words, the inwardly folded portions of Buell's *backsheet 41* in the *crotch region LCR* are the *gutters 45, 46*, rather than overlapping gutters formed by another layer of Buell's structure. Please see Buell's Figures 2, 7, 9, 10, 9a, 10a, and 11a, in which the *proximal edge 71* and the *distal edge 48* of the *gutter* are identified clearly, and in several of which the gutter width W_G is identified clearly. Please also see Buell's description of the structure, especially column 3 at lines 57-59, column 5

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at lines 2-26, 32-38, and 48-58, column 5 at line 65 through column 6 at line 6, column 6 at lines 7-60, and column 7 at lines 6-22. Thus, in fact, Buell does not teach or suggest lapping any other layer in the *crotch region* L_{CR} over the *gutters* 45, 46, and therefore does not teach or suggest attaching any such overlapping layer to the *gutters* 45, 46.

It also bears mention that Buell's *adhesive areas* 76 are not located in the *crotch region* L_{CR} , but instead are located in the *front waist region* L_{FWR} and the *rear waist region* L_{RWR} . Based on the references to preventing the inversion of the *gutters* 45, 46, it is surmised that perhaps the intention was to reference Buell's *adhesive area(s)* 77 and/or 78, which are located in the *crotch region* L_{CR} , instead of the *adhesive areas* 76, which are not.

Net, Pargass teaches only *leg gather assemblies* 32, and Buell teaches only *gutters* 45, 46. Neither teaches or suggests overlapping another layer or attaching any overlapping layer to their respective *leg gather assemblies* 32 or *gutters* 45, 46.

In the Office Action, it was stated that "Buell teaches that such a configuration prevents inversion of the *gutters* during wear" and that "it would be obvious...to modify the article of Pargass...as taught by Buell to prevent inversion" (Office Action, page 3, line 23 through page 4, line 3) of Pargass's *leg gather assemblies* 32, which were alleged to be equivalent to the claimed side flaps. The phrases "such a configuration" and "as taught by Buell" bear close examination. As explained above, Buell does not teach lapping any other layer over the *gutters* 45, 46, as was erroneously alleged in the Office Action. What Buell does teach is a structure in which "short lengths of the distal edges of the *gutters* are secured to underlying structure to obviate their inversion during application and use of the garment." Buell, column 4, lines 28-31. The *adhesive areas* 76, 77, 78 form these short lengths where the *distal edges* 48 are secured to the *topsheet* 40 to prevent the inversion of the *gutters* 45, 46.

Thus, Buell does, indeed, teach "a configuration" preventing inversion of the *gutters* 45, 46 during wear, but this configuration is not what was alleged in the Office Action. Therefore, Buell does not provide any teaching, any suggestion, or any motivation to modify Pargass's article as proposed in the Office Action. In other words, the proposed modification is unrelated

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to Buell's actual disclosure and appears to represent impermissible hindsight based on the disclosure of the present invention.

In fact, if Buell's *actual* teaching were applied to Pargass's article, the result would be merely to secure short lengths of the *outermost portion 39* of each of Pargass's *leg gather assemblies 32* "to underlying structure to obviate their inversion", *i.e.*, to secure Pargass's *leg gather assemblies 32* to Pargass's *topsheet 30*. This modification would not create the claimed invention.

Moreover, there is no proper application of Buell's actual teaching to Pargass's article that would create the claimed invention. In particular, even the generalized notion of securing folded "gutters" to underlying structure would not be sufficient. Instead, it would be necessary to first teach or suggest forming side flaps from a portion of an absorbent assembly and attaching them adjacent to their longitudinally opposing ends to the structure underlying them, and in particular to the interior surface of the absorbent assembly, not merely to some random surface. Buell does not do this. Then, it would be necessary to teach or suggest folding another layer, namely a layer of the chassis, in the crotch region so as to overlap the absorbent assembly's side flaps. Buell does not do this. Then, it would be necessary to teach or suggest attaching the overlapping chassis layer to the absorbent assembly's side flaps. Buell does not do this, either.

The following comments relative to the rejected dependent claims also bear mention.

Claim 4

Despite the allegation in the Office Action that, in one of the waist regions, Pargass's *backsheet 26* "is necessarily laterally extensible to a greater degree than...in the crotch region due to bonds present in the crotch region" (Office Action, page 4, lines 11-13), it is clearly not inherent in Pargass's structure that any particular portion would necessarily have a greater maximum extensibility than any other portion. For example, it is equally likely that Pargass's laterally extending *nonwoven strips 180, 182*, described as being "adhesively secured across the article...and serving a reinforcing purpose" (Pargass, page 11, lines 21-25), might very well restrain the *waist portions 12, 14* to such an extent that they have lesser maximum extensibilities than the *crotch portion 14*. Therefore, the statement in the Office Action regarding the

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maximum extensibilities of different regions of Pargass's structure is not supported by Pargass's disclosure. Instead, it appears to represent conjecture on the part of the Examiner.

Claim 5

Buell does not teach "that the backsheet 41 is attached to the side flap [gutter 45, 46 (Office Action, page 3, line 21)] and both are in turn attached to the inner surface of the diaper to form gutters" (Office Action, page 4, lines 23-24). Instead, Buell's *backsheet 41* is folded inward to form the *gutters 45, 46, i.e.,* the inwardly folded portions of the *backsheet 41* are the *gutters 45, 46*, as explained above in this Reply.

Also, it was stated in the Office Action that "[i]f there are exposed regions of the side flaps, then the function of leakage protection is realized to a lesser degree depending upon the amount of side flap area exposed. Thus it would be obvious to...leave uncovered respective exposed portions of the respective side flaps". Office Action, page 5, lines 1-8. However, the first sentence quoted above actually describes motivation to cover the entirety of the side flaps and thereby prevent leakage, *i.e.,* motivation to do exactly the opposite of what is alleged to be obvious in the second sentence.

Claim 9

In the rejection of this claim, it was indicated that Pargass's absorbent assembly includes the *absorbent panel 28*, which was alleged to be equivalent to the claimed absorbent core. However, in the rejections of Claims 1 and 20, the *absorbent panel 28* was not included. This inconsistency makes it unclear which elements allegedly form Pargass's absorbent assembly.

Claim 10

In the Office Action, it was stated that Pargass's "absorbent assembly also includes a water-impermeable bottom sheet disposed between the lower covering sheet 112 and the absorbent core 28" (Office Action, page 5, lines 19-20), referencing Pargass's *liquid barrier film 112* and *absorbent panel 28* by their respective reference numerals. However, the alleged equivalent to the claimed water-impermeable bottom sheet was not identified. Moreover, Pargass does not disclose any sheet disposed between the *absorbent panel 28* and the *liquid barrier film 112*. In

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other words, there is no sheet present in Pargass's structure that could be equivalent to the claimed water-impermeable bottom sheet.

Claim 11

In the Office Action, Pargass's *transfer layer 29* was referenced as an element "whose function is to both acquire and transfer fluid, thus said layer is considered herein to function as a storage component." Office Action, page 5, lines 22-24. This statement is internally contradictory. Neither acquisition nor transfer is storage. In simple terms, acquiring is getting, transfer is giving up, and storage is retaining. Consistent with these concepts, the claimed storage component 272 is disclosed in the present Application as serving "to absorb and retain liquid bodily waste materials." Specification, page 10, lines 26-27. In direct contrast, Pargass discloses explicitly that the *transfer layer 29* is "a liquid distributing transfer layer" (Pargass, page 9, line 17), not a layer that retains liquid. In addition, the "low basis weight nonwoven fabric layer" (Pargass, page 9, line 19), which Pargass discloses as the preferred embodiment of the *transfer layer 29*, is not capable of retaining any significant quantity of liquid bodily waste materials.

Claim 12

Pargass's *transfer layer 29* is not equivalent to the claimed storage component, as explained above. This leaves Pargass's *absorbent panel 28* as the only possible equivalent. However, Pargass discloses explicitly that the *absorbent panel 28* includes "comminuted wood pulp, sometimes referred to as wood fluff". Pargass, page 9, line 12. This is precisely the same material that is called "airfelt" in the present Application. Specification, page 10, line 28.

Summary with respect to rejections over Pargass in view of Buell

The requirements of MPEP 2142 for the establishment of a *prima facie* case of obviousness have not been met because the cited references fail to teach or suggest all of the limitations of any of the rejected claims. Accordingly, it is requested that the rejections of Claims 1, 3-5, 8-15, and 20 under 35 U.S.C. § 103(a) be withdrawn.

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Claim Rejection – 35 USC § 103 over Pargass in view of Buell and Roe

Claim 2 was rejected under 35 U.S.C. § 103(a) as being unpatentable over PCT Publication No. WO 99/13813 to Paragon, with Pargass as the inventor ("Pargass" hereinafter) in view of U.S. Patent No. 4,704,115 to Buell ("Buell" hereinafter), and further in view of U.S. Patent Application Publication No. 2002/0128617 to Roe *et al.* ("Roe" hereinafter).

This claim depends from Claim 1 and thereby contains all of the limitations of Claim 1. Pargass and Buell fail to teach or suggest all of the limitations of Claim 1, as explained above. Roe fails to remedy the shortcomings. Therefore, the requirements of MPEP 2142 for the establishment of a *prima facie* case of obviousness have not been met with respect to this claim. Accordingly, it is requested that the rejection of Claim 2 under 35 U.S.C. § 103(a) be withdrawn.

Claim Rejection – 35 USC § 103 over Pargass in view of Buell and LeMinh

Claim 6 was rejected under 35 U.S.C. § 103(a) as being unpatentable over PCT Publication No. WO 99/13813 to Paragon, with Pargass as the inventor ("Pargass" hereinafter) in view of U.S. Patent No. 4,704,115 to Buell ("Buell" hereinafter), and further in view of U.S. Patent No. 7,160,281 to LeMinh ("LeMinh" hereinafter).

This claim depends from Claim 1 and thereby contains all of the limitations of Claim 1. Pargass and Buell fail to teach or suggest all of the limitations of Claim 1, as explained above. LeMinh fails to remedy the shortcomings. Therefore, the requirements of MPEP 2142 for the establishment of a *prima facie* case of obviousness have not been met with respect to this claim. Accordingly, it is requested that the rejection of Claim 6 under 35 U.S.C. § 103(a) be withdrawn.

Claim Rejection – 35 USC § 103 over Pargass in view of Buell and Pozniak

Claim 7 was rejected under 35 U.S.C. § 103(a) as being unpatentable over PCT Publication No. WO 99/13813 to Paragon, with Pargass as the inventor ("Pargass" hereinafter) in view of U.S. Patent No. 4,704,115 to Buell ("Buell" hereinafter), and further in view of U.S. Patent No. 6,972,012 to Pozniak *et al.* ("Pozniak" hereinafter).

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This claim depends from Claim 1 and thereby contains all of the limitations of Claim 1. Pargass and Buell fail to teach or suggest all of the limitations of Claim 1, as explained above. Pozniak fails to remedy the shortcomings. Therefore, the requirements of MPEP 2142 for the establishment of a *prima facie* case of obviousness have not been met with respect to this claim.

In addition, Pozniak does not mention cohesive fastening elements. Also, Pozniak does not teach or suggest disposing fastening elements on both the interior surface and the exterior surface in a configuration such that the front waist region may be fastened over the back waist region or the back waist region may alternatively be fastened over the front waist region, in one and the same article. Instead, at most, Pozniak discloses that fastening elements may be disposed to enable either only front-over-back fastening or only back-over-front fastening, in a single article.

Accordingly, it is requested that the rejection of Claim 7 under 35 U.S.C. § 103(a) be withdrawn.

Summary of this Reply

The failure of the cited references to teach or suggest all of the limitations of any of the rejected claims and the consequent failure to meet the requirements for the establishment of a *prima facie* case of obviousness have been explained. A timely Advisory Action and the timely allowance of the pending claims are respectfully requested.

Respectfully submitted,
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13 August 2007

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